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Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Computer III Remand	)	
Proceedings: Bell Operating	)	CC Docket No. 90-623
Company Safeguards and	)	
Tier 1 Local Exchange Company	)	
Safeguards	)	
	)	
Application of Open Network	)	
Architecture and Non-	)	CC Docket No. 92-256
Discrimination Safeguards	)	
to GTE Corp.	)	

**Comments of the California Bankers Clearing House  
the New York Clearing House Association and  
MasterCard International, Incorporated**

The California Bankers Clearing House ("BCH"), the New York Clearing House Association ("NYCHA") and MasterCard International Incorporated ("MasterCard") submit these comments in response to the Public Notice issued in the above-captioned proceeding on March 10, 1994.

BCH is an association of financial institutions whose members include most of the leading banks in California.<sup>1</sup> NYCHA is an association of financial institutions whose members include eleven of the leading banks in New York.<sup>2</sup> Both BCH and NYCHA serve primarily as clearinghouses through which

<sup>1</sup> The members of the California Bankers Clearing House are Bank of America, Bank of California, City National Bank, First Interstate Bank, Sanwa Bank California, Union Bank and Wells Fargo Bank.

<sup>2</sup> The members of the New York Clearing House Association are The Bank of New York, The Chase Manhattan Bank, N.A., Citibank, N.A., Chemical Bank, Morgan Guaranty Trust Company of New York, Bankers Trust Company, Marine Midland Bank, United States Trust

members settle accounts and present checks and other payment instruments. They also represent their members in regulatory matters on issues of common concern. MasterCard is an association whose 29,000 member banks use the MasterCard service mark in connection with payment systems (including debit and credit cards), check authorizations, automated teller machines and related services. These parties have participated in the Commission's *Computer III* proceedings, taking a particularly active role in the development of the rules governing Customer Proprietary Network Information ("CPNI").<sup>3</sup>

### **I. Introduction and Summary**

The Commission is to be commended for acknowledging that recent developments in the telecommunications industry -- both real and foreshadowed -- have implications for the rules governing access to CPNI. The growing prospect of telephone company alliances, acquisitions and mergers with non-telephone company partners underscores the need to protect the proprietary information of *all* users of telecommunications services and to ensure that BOC-affiliated enhanced service providers will have no greater access to such information than unaffiliated enhanced service providers.

The Commission should modify its existing CPNI rules to make them symmetrical with respect to BOC and unaffiliated enhanced service

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Company of New York, National Westminster Bank USA, European American Bank and Republic National Bank of New York.

<sup>3</sup> See Amendment to Section 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 1150, 1161-64 (1988).

provider access to CPNI. It should also improve the rules to better protect customers' control over their own proprietary information.

## **II. Recent Developments**

The Commission's Public Notice alludes to recent local telephone company "alliances, acquisitions, and mergers with non-telephone company partners." The pace of diversification within the communications industry has been dizzying. A year ago, US West announced a strategic alliance with Time Warner, Inc. to offer interactive voice, data, video and image for consumers and businesses.<sup>4</sup> Six months later, NYNEX announced a \$1.2 billion investment in Viacom.<sup>5</sup> The Bell Atlantic merger with TCI dominated the front pages for days in October 1993 (and again in February 1994). In fact, by the close of 1993, nearly all of the RBOCs had entered or announced acquisitions or partnerships with major cable companies.<sup>6</sup> Three weeks ago, Ameritech announced a joint venture with British Columbia Systems, Corp. to offer on-line access to the public records of state, county and federal governments.<sup>7</sup>

## **III. Parity of Access to CPNI**

The developments that prompted the Commission's request for comments have seriously undermined the factual predicates that underlay the determination to give the BOCs preferential access to CPNI.

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<sup>4</sup> *Information Week*, May 24, 1993, p. 14.

<sup>5</sup> *Communications Daily*, Oct. 5, 1993, p. 1.

<sup>6</sup> *See Communications Daily*, Dec. 8, 1993, p. 1.

<sup>7</sup> *Communications Week*, Mar. 21, 1994, p. 39.

In the *Phase II Order*, BOC enhanced services marketing personnel were granted access to CPNI unless the customer expressly requested that this information be withheld. *Amendment to Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, 2 FCC Rcd 3072, 3093-98 (1987) ("*Phase II Order*"). On the other hand, a customer was required to sign an authorization to permit the release of its CPNI to an enhanced service provider unaffiliated with a BOC. *Id.* at 3094-95.

The Commission premised this scheme on two findings. First, it noted (in 1987) that the BOCs were barred by the *Modified Final Judgment* from offering most enhanced services and that, even if the ban were lifted (as it now has been), "they would enter the market with zero market share." *Id.* at 3095.

Second, the Commission found that access to CPNI would confer little marketing advantage on the BOCs, because consumers were well-aware "that the enhanced service market is competitive." Consequently, an initial marketing contact by BOC personnel would likely lead not to an immediate sale, but to an effort by the customer to solicit offers from other enhanced service providers. *Id.*

In the *Computer III Remand Order*, the Commission eliminated the disparate treatment between BOC and unaffiliated enhanced service providers with respect to access to the CPNI of customers with more than 20 business lines. *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991). The Commission retained the preferential access for BOC-affiliated enterprises with

respect to all other customers, however, on the grounds that a prior authorization rule for smaller customers "would require a BOC to establish separate enhanced and basic service marketing forces for those customers." *Id.* at 7610 n.155.

These rationales are no longer persuasive. First, the *Modified Final Judgment* no longer stands as a barrier to BOC provision of enhanced services. Moreover, there can be little doubt that, through mergers, acquisitions, joint ventures and the like, a BOC can enter a segment of that market with a market share far greater than zero.<sup>8</sup>

Second, the proposition that preferential access to CPNI adds little value to a BOC's enhanced service marketing efforts is counter-intuitive.<sup>9</sup> Nor has the Commission gauged the sophistication of customers, business or residential, in any scientific manner. But even if we assume that some customers recognize the existence of competitive alternatives to BOC offerings of enhanced services, that fact would hardly justify affording small business and residential (*i.e.*, the presumptively unsophisticated) consumers less protection

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<sup>8</sup> This ability to "hit the ground running" in new markets is not unique to the BOCs or even local exchange carriers. AT&T's pending transformation into the premier nationwide provider of cellular telephone service, MCI's emergence as the owner of local networks, and several planned (but as yet unconsummated) alliances between telephone and cable companies are all part of the rapidly shifting industry landscape.

<sup>9</sup> Any service provider entering a market or seeking to expand its operations needs to be able to design its capacity to meet likely customer demand levels. Insofar as CPNI may offer a valuable clue to that information, the Commission should require the local telephone companies to make it available on all enhanced service providers on an equal basis.

than larger business customers.<sup>10</sup> It is equally obscure how such a factor would justify granting the BOCs an advantage over their enhanced service competitors.

The claim that requiring the BOCs to deploy separate marketing forces for network and enhanced services for small business and residential customers is not compelling. Such customers already receive the attention of separate sales forces for the BOCs' Yellow Pages operations and for the sale and lease of customer premise equipment. The extent of any efficiencies realized by the current rules has not been quantified and, in any event, may well now be outweighed by the anticompetitive risks posed by permitting BOC-affiliated enhanced service providers preferential access to CPNI.

In sum, the Commission is exactly right in proposing to re-examine the rationales and assumptions underlying its rules in light of current marketplace realities. BCH, NYCHA and MasterCard all believe that these realities support modifying the rules to treat BOC-affiliated and unaffiliated enhanced services providers exactly the same.

#### **IV. Other Modifications to the Existing CPNI Rules**

Two other aspects of the current rules warrant revision. First, the Commission should re-visit the request made by several parties in 1987 that the solicitation of customer CPNI releases should not be made by BOC personnel

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<sup>10</sup> Indeed, Congress has applied customer protection measures in the field of telecommunications to all consumers. See, e.g., the Telephone Operator Consumer Services Improvement Act, which defines "consumers" as "a person initiating any interstate telephone call using operator services." 47 U.S.C. § 226. No distinction is made between sophisticated and unsophisticated consumers, nor are the statute's protections reserved for the former, e.g., those customers using corporate calling cards.

engaged in the provision of basic services. Those parties stated that such a prohibition would

prevent the BOCs from using their position as providers of regulated services to influence customers to grant CPNI authorizations for BOC enhanced service operations.

*Phase II Order* at 3094. Experience teaches that this concern was well-founded. Managers of communications services for large corporations have, on occasion, been told that CPNI authorization is necessary for the carrier to be able to deliver basic telecommunications as desired. Even large customers have been cautioned by BOC representatives that the carrier might not be able to meet their needs for on-time service provisioning if access to CPNI is not granted.

No rule of the Commission will eliminate the possibility of exaggeration by a carrier's enthusiastic employee. The only way to preclude the BOCs from taking unfair advantage of their position is to prohibit network service personnel from soliciting CPNI authorizations and to make clear that a customer's choices with respect to the use of its CPNI shall not effect the installation, maintenance and repair of basic services.

Second, the Commission should allow a customer to specify which of its proprietary information may be disseminated, when the authorization for such dissemination will expire and who within the customer has authority to grant or withdraw CPNI authorizations. The telephone companies should also be required to designate a telephone company employee to serve as a point of contact for customer inquiries and requests with respect to CPNI. These changes would alleviate confusion and would permit a customer to tailor the

waiver of its CPNI protections to particular circumstances -- limiting the disclosure, for example, to only that information necessary for a telephone company to respond to the customer's solicitation of proposals for enhanced services. In short, these changes would make clear that the "C" in "CPNI" stands for Customer, not Carrier.

## **V. Conclusion**

The Commission's existing CPNI rules do not offer adequate protection to *competitors* of the telephone companies in the provision of enhanced services because they are not symmetrical with respect to BOC and unaffiliated enhanced service provider access to CPNI. The rules could also be improved in several respects to offer better protections to *customers* of the telephone companies. The restructuring of the industry evidenced by recent alliances, acquisitions and mergers makes it all the more important that the Commission adapt its rules as proposed here.

Respectfully submitted,

  
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**Certificate of Service**

I, Einar Torbjornsen, hereby certify that true and correct copies of the Comments of the California Bankers Clearing House, the New York Clear House Association and MasterCard International Incorporated on the Rules Governing Telephone Companies' Use of Customer Proprietary Network Information were served on this 11th day of April 1994 by hand delivery upon each of the following persons:

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